THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 21405 OF 2003

27th July, 2005.

Between:

Manne Bixapathi s/o Kotaiah aged about 40 years,

Occ: Business r/o Antharam (V) Mandal, Jinnaram, Medak Dist.

…Petitioner

A N D

1. Jinka Chinna Sathaiah and Others. …Respondents

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 21405 OF 2003

ORDER:

1. This writ petition has been filed with a prayer to issue writ, order or direction more particularly one in the nature of writ of mandamus declaring the order dated 24-9-2003 in O.P.No.5 of 2001 on the file of Junior Civil Judge, Narsapur, Medak District

is not sustainable and the same is liable to be set aside.

2. The 1st respondent herein filed petition under Section 233 of the A.P.Panchayath Raj Act, 1994 against the writ petitioner and others to declare the election of the writ petitioner as void and instead declare 1st respondent, as candidate for the post of Sarpanch Anantharam village.

3. The parties herein after referred to as they are arrayed in O.P.No. 5 of 2001.

4. The petitioner-Jinka Chinna Sathaiah and 1st respondent Manne Bixapathi contested for the post of Sarpanch. Even at the time of the nomination the petitioner questioned the eligibility of the 1st respondent. The petitioner secured 140 votes and 1st respondent secured 238 votes and thus the petitioner was declared successful. The petitioner filed election petition being O.P.No. 5 of 2001 under Section 233 of the A.P. Panchayath Raj Act, 1994 questioning the election of the 1st respondent as Sarpanch. The ground urged for declaration of the election of the 1st respondent as void is that the 1st respondent had given birth to a third child after commencement of the A.P. Panchayath Raj Act, and as such not eligible to contest the election of Sarpanch in view of the disqualification provided under Sub-Section (3) of Section 19 of the Act and therefore, he could not have been declared as successful candidate in the election.

5. The petitioner besides examining himself as PW-1 examined one R.Ritamma as PW-2 and marked Exs. P-1 to P-3. The 1st respondent got himself examined as RW-1 and examined one Manne Sadaiah as RW2 who is another contesting candidate. The 1st respondent marked Ex.R-1 birth certificate issued by the Medical Officer.

6. It is the contention of the 1st respondent that his wife gave birth to a third child on 24-4-1994 and thus he had not incurred any disqualification as on the date of the election. The learned Junior Civil Judge, on thorough appreciation of the evidence brought on record, recorded a finding that the wife of the 1st respondent-Manne Bixapathi had given birth to a third child on 25-10-1995 i.e. after the commencement of the Act and thereby he became disqualified to contest the election under Section19(3) of the Act. Assailing the order passed in O.P.No. 5 of 2001 the 1st respondent therein has filed this writ petition.

7. The learned counsel for the writ petitioner who is the 1st respondent in O.P.No.5 of 2001 contends that the writ petitioner has not acquired any disqualification under the Act. Since the third child was born on 24-4-1994 within the grace period allowed under the Act. He further submits that the trial Court has not correctly appreciated the evidence brought on record and thereby erred in allowing the O.P.No.5 of 2001. In support of his submission, he placed a reliance on the Division Bench decision of this Court in ***Bhukya Bujji Vs. Enukya Saraswathi,*** in para 15 of the judgment it has been observed by the Division Bench of lthis Court as follows:

> *"The register is maintained under the provisions of the Registration of Births and Deaths Act, 1969 (Central Act No. 18 of 1969) Section 35 of the Evidence Act provides that entries made in such a register in public record in performance of official duty relevant. Presumption of correctness is attached to such entries. Therefore, on the evidence led, not only the extracts from register are admissible in evidence under Section 35 of Evidence Act but presumption of regularity of official acts done in discharge of the public duties ought to have been raised under Section 114 of the Evidence Act. Evidence led by respondent No.1 was neither relevant nor admissible under Section 50 of the Evidence Act. Though PW-2 stated that he belongs to the same caste as that of the appellant, he was unable to give the approximate dates, months or years of birth of the other three children. His statement could not have been relied upon by the Election Tribunal being an interested person having fought election in support of respondent NO.1."*

8. It is explicit from the above referred paragraph that the Division Bench rejected the evidence of PW-2 on the ground that PW-2 is an interested person and he was not able to give approximate date, month and year of the birth of other child. The learned counsel for the 1st respondent who is the petitioner in O.P.No. 5 of 2001 submits that PW-2 is the nurse who attended delivery of the wife of the writ petitioner and she is the author of the entries of the birth register which has been exhibited as Ex.P-3 and therefore, the election Tribunal is justified in placing reliance on the evidence of PW-2 in recording a finding that the wife of the writ petitioner gave birth to a third child on 25-10-1995. The only issue that survives is whether the wife of the writ petitioner has given birth to third child on 24-4-1994 or on 25-10-1995?

9. The 1st respondent who is the petitioner in O.P. 5 of 2001 besides examining himself as PW-1 examined the nurse who attended the delivery of the third child of the wife of the writ petitioner as PW-2. Ex.P-3 is the register of birth and death. It is categorically stated by PW-2 that she is author of the entries in the register in Ex.P-3 and that the wife of the writ petitioner gave birth to third child on 25-10-1995. The election Tribunal considered the evidence of PW-2 and made the following observation as follows:

> *"The learned counsel for the respondent No.1 vehemently argued that Ex.P-3 is a fabricated and concocted document for the purpose of this petition. On a careful perusal of Ex.P-3 register of birth and death it clearly shows that this is a prescribed book under the Act and it clearly shows that it was maintained by the hospital authorities from 18-2-1994 to 31-8-1999, it is highly impossible and improbable to manipulate or create Ex.P-3 register, because the entries made in Exs. P-3 from 1994 to 1999 with full particulars such as name, date of delivery, date of registration, parents name and who attended the delivery it cannot be said that it is a fabricated, forged and concocted document. On the other hand the first respondent did not choose to file any documentary evidence to show that his third son was born on 24-4-1994 to rebut the oral evidence of PW-2 and to rebut the contents of Ex.P-3. The first respondent only filed certificate issued by the medical officer Primary Health Centre Gummadidala which reads as follows:-*
>
> *<u>BIRTH CERTIFICATE</u>*
>
> *Certified that Smt. Manne Padma w/o Bixapathi R/o Antharam (v), Mandal Jinnaram delivered on 24-4-1994 a male child conducted by M. Prasuna MP.H.A.F. R/o Gummadidala".*

10. The learned counsel appearing for the writ petitioner placed reliance on the provision of Section 12 and 16 of Registration of Births and Deaths Act, 1969 and in support of his submission that the entries made in the Register are presumed to be correct. The evidence brought on record clearly establish that the wife of the writ petitioner had given birth to the third child on 25-10-1995 i.e. after the commencement of the Act and thereby incurred statutory disqualification.

11. The trial Court observed that the writ petitioner except marking the birth certificate (Ex.R-1) said to have been issued by the Medical Officer, no material has

been placed to show that his wife gave birth to a third child on 24-4-1994. Instead the 1st respondent who is petitioner in O.P.No. 5 of 2001 placed on record the birth register which has been exhibited as Ex.R-3 and examined PW-2 who is the author of the entries in the birth register (Ex.P-3) to show that the wife of the writ petitioner has given birth to a third child on 25-10-1995.

12. I find that the findings recorded by the trial Court is based on cogent and convincing evidence. Therefore, the same is not required to be disturbed.

13. Accordingly, the writ petition is dismissed. No order as to costs.

_____

B.Seshasayana Reddy,J

27th July, 2005.

Note:

C.C. in a week.

B/o

KM

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

W.P.No. 21405 OF 2003

27th July, 2005.